

MINUTES
Approved by the Committee
Public Defense Reform Interim Committee
Tuesday, October 28, 2014
8:00 am to 3:00 pm
WW53, State Capitol
Boise, Idaho

Co-chair Senator Todd Lakey called the meeting to order at 8:10 a.m. and requested a silent roll call. Members present were: **Co-chair Representative Darrell Bolz**, Representatives Lynn Luker, Christy Perry, Janet Trujillo; and Senators Dean Mortimer and Jim Guthrie (via phone). Representative Meline and Senators McKenzie and Buckner-Webb were absent and excused. Legislative Services Office staff members present were Ryan Bush, Jared Hoskins, and Jackie Gunn.

Others in attendance included: Lorna Jorgensen, Ada County Prosecutor's Office; Judge Molly Huskey, 3rd District Court; Marilyn Paul, Twin Falls County Public Defender's Office; Alan Trimming, Ada County Public Defender's Office; Ian Thomson, Public Defense Commission; Seth Grigg and Jerry Mason, Association of Idaho Cities; Dan Chadwick and Dan Blocksom, Idaho Association of Counties; Kathy Griesmyer, ACLU of Idaho; Sara Thomas, State Appellate Public Defender; and David Carroll, 6th Amendment Center (via phone).

Note: Copies of the presentations, reference materials and handouts are on file at the Legislative Services Office. PowerPoint presentations and handouts are posted on the Idaho Legislature website: <http://www.legislature.idaho.gov/sessioninfo/2014/interim/defense.htm>.

Co-chair Representative Bolz moved to approve the committee minutes for September 25, 2014. The motion was seconded and passed unanimously.

Co-chair Senator Lakey introduced **Jared Hoskins, Budget and Policy Analyst**. His presentation, "Preliminary Fiscal Analysis, Part II: Measuring the Cost of Potential Approaches to Public Defense Reform," can be accessed at: http://www.legislature.idaho.gov/sessioninfo/2014/interim/pdef1028_hoskins.pdf.

Mr. Hoskins' charge was to calculate the anticipated costs for implementing the following three approaches: resource parity; reduction of caseloads based upon certain guidelines; and training so that public defenders have the tools and information they need to provide constitutionally adequate representation. A total of five surveys went out to the following offices: the county clerks, county and city prosecuting attorneys, and the county and contract/appointed public defenders. He stated the response rate was less than hoped for. They could not measure with a degree of precision how much it would cost to implement these reform measures; however, the information collected was useful. Primarily, the survey results will provide reference for certain assumptions that will be used in his sensitivity analysis. Additionally, the information collected helped identify important nuances when it came to reporting public defender information. One example he noted is the various methods for counting felonies; "do we count only those bound over to district court or do we count those that are somehow resolved prior to making it over to district court?"

Mr. Hoskins' stated that 26 of the 44 counties responded to the survey. The survey data information packet can be accessed at: http://www.legislature.idaho.gov/sessioninfo/2014/interim/pdef1028_iso.pdf. He reviewed data charts that reflected the estimated current expenditures for public defenders and prosecuting attorneys for current fiscal year 2014; the common caseload statewide and the common workload statewide for fiscal year 2014; parity analysis; analysis of common workload between the two offices; the cost of public defense workload limits; and the cost of public defense training. **Representative Luker** asked **Mr. Hoskins** to clarify whether the prosecuting attorney numbers include civil, as well as criminal, and **Mr. Hoskins** responded that right now it includes total

expenditures, so it would include civil matters. Referring to the data chart, **Co-chair Senator Lakey** noted **Mr. Hoskins** incorporated some of the expenditures from the Attorney General's Office in his calculations for cost of prosecution and asked if the Attorney General handles a number of these public defender post-convictions, and if so, wouldn't there be an offset. **Mr. Hoskins** replied that the only expenditures he included from the Attorney General's Office were for the special prosecutions, which wouldn't be these post-prosecutions, district court appeals or termination cases, or Internet crimes against children cases. He stated that those expenditures were not double counted. Following up, **Representative Luker** asked if there is more to add to the prosecuting attorney total and **Mr. Hoskins** answered that to have a full accounting they would have to know the portion of Attorney General expenditures that go towards those cases that public defenders are in and the prosecuting attorneys are in.

Referring to PowerPoint Slide 17 (the cost of public defender workload limits), **Co-chair Senator Lakey** noted that the ABA guidelines would call for 270 full-time public defenders and asked if there is a count of the full-time public defenders. **Mr. Hoskins** answered no, they do not have a total at this time but they assumed 270 public defenders for the calculations of Slide 18 (training costs). **Co-chair Senator Lakey** observed that **Mr. Hoskins** put forward the assumptions of 20 percent for the civil caseload for the prosecuting attorneys and 15 percent for private counsel and pro se, and asked him to explain how these percentages were derived. **Mr. Hoskins** answered the 20 percent was garnered from a few of the responses he received from prosecuting attorneys and the 15 percent came from responses from the public defenders, as well as available nationwide data (85 percent of all cases have a public defender assigned). **Co-chair Senator Lakey** asked if the survey requested caseload information from the public defenders and **Mr. Hoskins** stated the surveys asked the public defenders by case type how many cases they were assigned, but he did not get enough responses, so they went with assumption of 85%. **Co-chair Senator Lakey** asked if the survey responses the members received includes public defender caseloads and **Mr. Hoskins** replied that they would provide that information to the members.

Co-chair Representative Bolz invited **Mr. Alan Trimming, Ada County Public Defender's Office**, to provide a breakdown of staffing for his office. **Mr. Trimming** stated that not including himself there are 21 felony division attorneys (four assigned to the preliminary hearing level and 17 assigned to the district court trial level, and that includes his chief deputy); 17 misdemeanor/criminal division attorneys cases (15 dedicated to specific calendars and two floaters); two Child Protection Act division attorneys; and four juvenile division attorneys. Addressing parity, **Senator Mortimer** noted that we are somewhere between \$2 million and \$9 million apart, using some degree of our current caseloads and **Mr. Hoskins** confirmed that is his best guess, employing his assumptions. For more precision, he stated the two important variables to measure are the percentage of expenditures attributable to civil matters for the prosecution and the percentage of cases that a public defender is assigned.

Mr. Trimming added that in the last fiscal year just less than five percent of all the types of cases his office is assigned were conflicted or assigned to conflicts counsel. He stated 705 out of 13,000 cases went out to conflict staff and he opined these cases would need to be included in the analysis of determining how many public defenders are out there. **Mr. Trimming** explained how in some instances his office represents one parent and a conflict attorney is assigned for the other parent and **Co-chair Senator Lakey** then asked him if the county contracts separately for the attorney who represents the child. **Mr. Trimming** explained the volunteer guardian/state bar attorney participation under the Court Appointed Special Advocate (CASA) program, and stated that due to federal guidelines, there needs to be a separate attorney for the child and it is this attorney that is contracted out.

Co-chair Senator Lakey asked **Representative Luker** to begin discussion on the revised draft legislation (RCB012) that can be accessed at:

http://www.legislature.idaho.gov/sessioninfo/2014/interim/pdef1028_rcb012.pdf.

Representative Luker noted the changes made to the draft on page two, within new section 19-859A, Idaho Code, subsection 3. Changes applied since the last meeting include: (1) revised syntax in lines 4 and 5 to make it read cleaner; (2) addressed concerns about initial appearance following the determination of qualifications; and (3) **Representative Luker** explained that it was brought to the committee's attention there is a provision for misdemeanors where any dismissal is with prejudice, and this is different from felonies and the remedy was changed to actually have a dismissal unless for good cause court grants a continuance. He stated the draft reflects only the legal concerns raised at the last meeting and he asked **Mr. Bush** if the Supreme Court provided him with the information regarding the number of city misdemeanor prosecutions. **Mr. Bush** answered that the statistics people at the Supreme Court told him their statistics were only available by district and stated that he would forward the general number **Representative Luker** requested during the lunch break.

Mr. Seth Grigg, Association of Idaho Cities, stated we don't know the percentage of misdemeanor charges made by a city officer that are for state traffic infractions, state misdemeanors, county misdemeanors versus municipal misdemeanors. So, they analyzed the data of one county (Kootenai) and though they weren't able to differentiate infractions and misdemeanors, they were able to determine by the code section charged and, depending on the jurisdiction within Kootenai County, the percentage of city ordinances that were charged ranged from .23 percent of those charges, all the way up to 3 percent of the charges. He opined that a majority of the charges that are issued by a city officer are indeed for a state traffic violation or for a state code violation, as opposed to a municipal code violation. Continuing, he stated that the draft legislation discussed by **Representative Luker** would require cities to either create their own in-house public defense office, contract with a private public defender, or contract with a county to provide public defender services. He stated that cities are ill-equipped and ill-prepared to handle this. He said the cities are willing to have discussions regarding how the services are funded but, at the end of the day, their folks are reluctant to get into the business of having to contract for public defenders or contract with the counties for public defenders.

Referring to the proposed legislation, **Representative Luker** stated the cities need to address their financial part of public defense, where they are generating the workload based on city ordinances. He noted that the committee's efforts are hampered because the numbers are not available to evaluate fully that issue and reiterated that when cities have prosecution functions, they at least need to recognize the impact of the costs. **Senator Mortimer** observed that the draft legislation brings a bit of checks and balances to the system - it creates the opportunity for conversation between the cities and the counties, as well as a heightened awareness of costs. He stated that the comment that the cities are not prepared to take the contracting on is not an adequate explanation. They have to because they are passing the ordinances and creating a need for public defense. So, it is important to have the discussion between the city, the county and the state. **Representative Perry** stated she is supportive of the idea. She observed that prosecution is optional where defense is constitutionally mandated, so if you are going to prosecute, then you must absolutely provide defense and the committee needs to send this message.

Co-chair Representative Bolz stated in terms of legislation, it is important to be updated by **Mr. Chadwick** on the efforts to reclassify some misdemeanors to infractions. **Co-chair Senator Lakey** stated he believes that **Mr. Grigg's** numbers are pretty close, that we are talking about a very small percentage of the total misdemeanor cases that come from the city that would fall under this legislation. If it is simply a city ordinance that is a misdemeanor, then we are not talking about a big number of cases or a big number from the city's budget and **Mr. Grigg** agreed it does provide some incentive to be cautious on what you classify as misdemeanors. He stated that he anticipates there will be discretion in what cities can budget based on costs and revenue.

Co-chair Senator Lakey opened the scheduled general discussion portion of the meeting and explained that **Senator Buckner-Webb** submitted several questions for committee consideration. **Co-chair Senator Lakey** summarized, stating that **Senator Buckner-Webb** raised some concerns about

the proposed legislation in requiring the cities to participate; specifically, the reform that would amend many city and state code sections to infractions this session via legislation and she suggested it would be prudent to wait and see what happens with that reform. She also asked about whether city code misdemeanors make up a statistically significant portion of the public defender caseload, and **Co-chair Senator Lakey** agreed that it is a small number. A copy of **Senator Buckner-Webb's** questions were distributed to the committee members. **Sara Thomas, State Appellate Public Defender**, discussed the status of the reclassification effort. She indicated that the Criminal Justice Commission will recommend to the Governor that certain things be reclassified and added there is no recommendation for proposed legislation tied to that. She stated that it is merely a list of statutes, as well as county and city ordinances, that the commission recommends be reclassified. She stated she could get a copy of the memorandum with the list of recommendations to the committee members.

Representative Trujillo commented that she perceived the problem to be that cities do not want to provide defense, but when we talk about moving misdemeanors to infractions, they don't want to do that either and **Ms. Thomas** responded that the commission has received good input from the cities and counties and they are willing to go back and look at the ones the commission recommended. **Representative Luker** asked if the commission examined the overlap that appears to exist between city and state laws, where often it is the state that pre-empts. **Ms. Thomas** responded that state law does pre-empt the city and county ordinances to some degree but the commission did not go back and match everything up to see where the overlap occurs. **Ms. Thomas** stated that she was surprised to hear that the Supreme Court was unable to provide numbers because they provided the commission a sheet with all the misdemeanors charged in the State of Idaho more than ten times in fiscal year 2013 and it is broken down by the ordinance charged under. She stated that she would get this document to the committee members. **Co-chair Senator Lakey** asked, outside the list of recommendations, are there still opportunities for cities to designate certain things either a misdemeanor or an infraction and **Ms. Thomas** stated yes, and explained that the all members had to agree on any recommendation for reduction of a misdemeanor to an infraction. So, there is still the ability for cities and counties to go back and review the discussions and make their own decisions.

Representative Luker stated that House Concurrent Resolution 40 is the committee's marching orders and noted that on page 2, starting on line 12 of the HCR, the committee is "to undertake and complete a study of potential approaches to public defense reform including, but not limited to: funding issues; municipalities' participation in and potential financial contribution to the public defense system; and effective enforcement mechanisms to ensure compliance with public defense system standards and requirements." He observed that those are the three identified issues in the resolution and he encouraged the members to discuss those. He sees the commission as providing an essential function of providing the Legislature with future information about a lot of issues regarding workload and contract revisions, standards for continuing education. He stated that much may have to evolve upon the Legislature and the germane committees. He posed the question to the members, "is there specific legislation that this committee needs to look at to accomplish any of these goals?"

Co-chair Representative Bolz followed up, observing that the process will take more than one or two years because the Legislature must review the data collected and recommend a system that is the right fit for Idaho. He stated it appears the Association of Counties wants a state-run system. He stated that he didn't see Idaho going to a state-run system because county public defense offices would not want to give their financial support to the state to distribute. He explained that **Mr. Carroll** has listed the strengths in adopting a bifurcated system in Idaho. He opined that perhaps if the Public Defense Commission comes up with some standards that the counties have to operate under, perhaps the state needs to help fund those counties where we are establishing mandates. He stated that he believed a bifurcated system can work in Idaho, while still protecting local control. **Senator Mortimer** agreed with **Co-chair Representative Bolz** and stated his appreciation for how far they have come, pointing specifically to the areas of guidelines and training. He emphasized that the

counties and cities need time to absorb the work done so far and he voiced his support of **Co-chair Representative Bolz's** comments. **Representative Luker** stated the importance of the work done by the commission and asked if the members might get their report to the interim committee sooner and **Co-chair Representative Bolz** stated that **Judge Huskey** will explain the timing of access to the report when she presents later in the meeting.

Co-chair Senator Lakey introduced **Ian Thomson, Executive Director, Public Defense Commission**. **Mr. Thomson** presented his PowerPoint on the State Public Defense Commission and it can be accessed at: http://www.legislature.idaho.gov/sessioninfo/2014/interim/pdef1028_thomson.pdf. In his introductory remarks regarding defense parity, he observed there is almost no way to parse out the amount of funding that goes into law enforcement, because it is a prosecution function. So, when the defense comes on late in the game, it gets the prosecution's investigation or the defense must reinvestigate and go back to square one. He observed that only from this point forward can parity be derived, but at present there is no attempt to measure what expenses are incurred before they are given the prosecution's investigation. He opined that it is not an issue of throwing a little more money at it; though money will help, it won't make it a fair fight. **Mr. Thomson** reaffirmed the importance of the 6th Amendment and emphasized that it is the foundation upon which all the other constitutional rights sit. Further, he stated, "if a criminal defendant does not have an adequate defense none of those other rights have any substance or meaning."

Mr. Thomson provided a breakdown of the 229 (provisional total) public defenders in Idaho:

Institutional Defenders	112	49%
<i>(Ada, Bannock, Bonner, Bonneville, Canyon, Kootenai, Mini-Cassia, Twin Falls)</i>		
Contract Defenders	65	28%
Conflict Attorneys	28	12%
Other (incl. Washington Co.)	9	4%
SAPD	15	7%
One Vacancy (Boise County)		

Mr. Thomson commented that the 15 SAPD figure should be taken off the total because they do not provide support at the court level and he pointed out that a full half of the total number of public defenders is institutional, which numbers 112 full time spread throughout the counties. He noted it is essential to calculate what percent of the contract public defender practices are dedicated to public defense. There are 65 contracts signed right now but counties handle their contracts in various ways. **Representative Trujillo** asked for breakout data on the eight counties with full-time public defenders and **Mr. Thomson** stated he will email the data to the members and noted the disparity between the full-time attorney offices based on population and observed it appears to be a factor of almost four.

Senator Mortimer confirmed with **Mr. Thomson** that the caseload numbers are not available at this time and **Mr. Thomson** said it would be over a year before they will have those numbers. He emphasized the challenge is to get all the counties to participate in the survey and then to record and send the data to the commission. Following up, **Senator Mortimer** asked **Mr. Thomson** if a current representation can be gleaned from the total number of existing cases and **Mr. Thomson** replied that **Mr. Hoskins'** educated guess of how many of the cases are public defender cases is okay in the short term but the commission needs the percentage handled by each office.

He reviewed the chart entitled "Public Defenders by Judicial District" and observed that the 2012 numbers (full-time and contract public defenders) reflect a great disparity:

District	Population	PDs	People per PD
1st	215,416	46	1 every 4,683
2nd	106,439	20	1 every 5,322
3rd	258,575	28	1 every 9,235
4th	451,494	50	1 every 9,030
5th	187,019	36	1 every 5,195
6th	121,205	13	1 every 9,323
7th	255,442	22	1 every 11,611
Total	1,595,590	215	1 every 7,421

Co-chair Representative Bolz asked **Mr. Thomson** if he has looked at other states to see their ratios regarding public defenders to population and **Mr. Thomson** stated he has not but may look at that in the future after completing the statistical analysis. He closed his presentation remarks by commenting on the geographic allocation of public defenders in Idaho. He emphasized that geography needs to be taken into account when creating a system, because it must account for the ability to provide adequate services, the travel involved, and the facilities. Regarding local control, he stressed how there are large swaths of the state that have no public defenders, that the local/regional nature of public defenders varies widely depending on the judicial district, and several districts resemble a hub and spoke model. He stated that when determining parity, the weaknesses of the hub and spoke model (evident in the first, sixth and seventh districts) must be addressed. He emphasized that the prosecuting attorneys do not have the problems that the public defenders have in these districts because they are on site and they do not have the responsibility of representing clients. Speaking to the hub and spoke model data from the judicial districts, **Co-chair Senator Lakey** commented that he understands the need potentially to bring someone in from out of the county but he does see the local control existing in the county commissioners because they decide who gets the contract and how those services are provided, whether they combine with another county adjacent to it or not.

Representative Trujillo asked what role technology might play; for example, if videoconferencing can be employed in some situations. **Mr. Thomson** stated that videoconferencing is already in use and definitely is an option if it is a closed-circuit, secure line. However, he emphasized that with defense of a serious case it must be conducted face-to-face. **Mr. Thomson** reviewed the immediate charge of the Public Defense Commission:

- **Model Contract Terms** -- Other state model contracts; contracts currently being used around the state; and qualification standards.
- **Training for Public Defenders Statewide** -- Developing eligibility rules; and considering how to best provide in-depth training throughout the state.

and the future charge of the Public Defense Commission:

- **Report to Legislature** -- Analysis of public defense services rendered; evaluation of efficiency and efficacy; and fiscal impact.
- **Quantitative analysis of caseloads** -- Accounting for population difference; and accounting for difference in crime rates.

Mr. Thomson stated that the commission will be ready to report to the Legislature in January for the model contract terms. He reemphasized that it will take two years to gather and analyze the data. Regarding training, he discussed the preference to provide on-site training that will cover topics in depth relating specifically to indigent defense representation and criminal defense. He continued, stating they hope to partner with other organizations to use resources, such as National Association of Public Defense (NAPD) webinars. Finally, he stated the commission will work to make public defenders aware of all the resources available to them. He underscored the fact that he has plans to provide great reports in the future from the commission. Once the data is collected, he

believes the commission will be able to evaluate the efficiency and efficacy of some of the public defense offices and be able to tell the Legislature if they are getting the best bang for the buck.

Representative Luker asked if there was anything identified by the commission that needed to be addressed legislatively, whether from the past or going forward and **Mr. Thomson** replied "no, it is simply too early." Continuing, he stated the commission has met five times and is assessing the situation. He reiterated the priorities of getting the model contract terms worked out and getting a protocol for spending for training by January. He asked the committee to give the commission two years to determine specifically where the disfunction in the defense system is because they can only diagnose the problem with good information. Noting the report from the Criminal Justice Commission on reclassification, **Representative Luker** asked if the Public Defense Commission will have any comment on that and **Mr. Thomson** stated he did not believe so. Speaking from the SAPD perspective, **Ms. Thomas** suggested that one thing that needs to be addressed with legislation is the ability for judges to appoint counsel. She stated that legislation recently enacted has created confusion and that some counties need the ability to, on a case-by-case basis, appoint conflict counsel. **Representative Luker** asked if she is referring to section 19-859, Idaho Code, enacted in 2014 (H542), and asked her to elaborate. **Ms. Thomas** stated it was the section that stated that you can either have a public defender office or you can have contracts and they took out the flat fee portion and the bill took out the section that gave the courts the ability to appoint and she stated the problem would be solved by reinstating the language that was there before, but she stated she will look at the statute again to confirm this. **Mr. Thomson** advised caution because to put the language back in might very well gut the original intention, which was to force counties into establishing a predictable system as to how the indigent clients are going to be appointed and represented. If the intention of the original bill was to incentivize the lead counties to have a preference for either an established public defenders office or a contract where everyone knows the terms, then he stated the exception to opt out should not be carved in stone.

Co-chair Senator Lakey invited **Mr. Trimming** to join in the conversation. **Mr. Trimming** stated, "if court appointment is reinstituted, the legislation should be crafted such that there is an in place, up-and-running, arguably efficient, and constitutionally adequate office." He opined that the court should be restricted to appointing that office. Following up, **Representative Luker** suggested the provision should read that the court shall not appoint a public defender, except in certain situations. **Mr. Trimming** agreed and also stated that he bristles when he has judges dictating the internal operation of his office and he doesn't want the court's intrusion supported through statute. **Co-chair Senator Lakey** asked **Mr. Thomson** if he anticipates having recommendations related to the contract model terms and training by January and by next session as far as standards and **Mr. Thomson** responded that the commission is already contemplating some qualifications in the model contract or including caseload caps and a maximums in those contracts. He explained that some of the standards will be slowly incorporated into things like the model contracts. **Co-chair Senator Lakey** stated that qualifications would be something a little more readily developed by the committee, but he is cautious about caseloads because having correct numbers to go by is essential. He asked **Mr. Thomson** to confirm that the commission will recommend a model contract and **Mr. Thomson** assented and stated that a dozen contracts expired October 1 and many of these counties would prefer to go with month-to-month contracts for the immediate future. He restated that the Public Defense Commission serves as a resource to the county commissioners. And, the commission is exploring incorporating optional provisions within the model contract that would allow smaller counties to choose from a buffet of options.

Co-chair Senator Lakey introduced **Dan Blocksum, Idaho Association of Counties**. **Mr. Blocksum's** PowerPoint presentation entitled "Current State of County Levies" can be accessed at: http://legislature.idaho.gov/sessioninfo/2014/interim/pdef1028_chadwick.pdf. **Mr. Blocksum** referred to a chart that reflected the percentage used of county levies, which included: current expense levy, justice levy, and district court levy. He noted that 12 counties do not have a justice levy, Ada

being the largest; and two counties do not have a district court levy. The chart can be accessed at: http://legislature.idaho.gov/sessioninfo/2014/interim/pdef1028_chadwick2.pdf.

Senator Mortimer asked for a clarification regarding where the moneys are coming from that make up the three levies. **Mr. Blocksum** explained that the three levies are all based on property values. Referring to the top of the handout, he noted that with the current expense levy the maximum levy they can do is .0026, so that is how much of the property values that they can use. For the justice levy it is .002 and for district court it is .0004. In general, certain things are supposed to be funded through certain levies. Following up, **Senator Mortimer** asked if most of the counties are assessing this "percentage used of max" each and every year. **Mr. Blocksum** deferred to **Mr. Chadwick, Executive Director, Idaho Association of Counties**. **Mr. Chadwick** explained that if you have a Justice Fund levy and the current expense levy, your levy is .20 for both of them. When the Justice Fund was created, it gave the counties a little more flexibility in terms of how they were going to actually levy. The levy is assessed against the market value and then that is the money that is raised for that particular function for that particular year. **Representative Luker** stated that **Mr. Chadwick** seems to be saying that if a county has a district court levy, then that county's current expense levy has a lower maximum and **Mr. Chadwick** responded that if a county has a Justice Fund, then the current expense levy goes to .20 and you have a Justice Fund levy of .20. Following up, **Representative Luker** asked if the current expense levy is for general operations for the county and **Mr. Chadwick** explained that the general operations levy is the county's General Fund. **Representative Luker** asked what is encompassed in the justice levy. **Mr. Chadwick** answered the levy is used for things like the sheriff, jail operations, probation and juveniles, anything related to the justice system would be going to the Justice Fund. **Representative Luker** asked if counties have to look at it and ask if it is worth it to segregate these funds from the current expense levy so that they can maybe squeeze a little more here but maybe not for some counties. **Mr. Chadwick** responded that his analysis is correct for what the counties go through to determine if it is worthwhile. He also explained that the district court levy is designed for the operation of the court, so it will include things like court facilities and operations and the deputy clerk salaries. He added that the two counties that don't have the district court levy rely on fines and fees to generate the funds used for court operations.

Representative Trujillo asked **Mr. Chadwick** to explain how the levies fit in the greater context of the county budgeting process. **Mr. Chadwick** stated that the process begins in May, when the assessors office sets the market value for the year, with the Board of Equalization in June and first part of July, and then the final market values are established. At the same time, the county budget process starts in April and May, when the clerk sends out budget sheets to the various departments of elected officials and they make their budget requests to the board of county commissioners. The county clerk compiles all of that and creates a preliminary budget that it presents to the board of county commissioners and they conduct hearings in August. The budget is adopted in September. At the same time, the board has the obligation to raise the revenue to fund that budget. So now the county has that gross amount of market value and has decided what kind of budget it wants to have. In order to raise the revenue for that particular budget the county applies the levy to the market value to generate the dollars to fund that budget. **Representative Luker** asked if he is saying that there are two sets of checks and balances: the county says it is going to take its 3%, but if that goes over the maximum levy rate, the county can't take the 3%, and visa versa. **Mr. Chadwick** confirmed **Representative Luker's** analysis. **Representative Luker** asked, if a county has established a Justice Fund levy, is the public defender paid out of that and is there a statutory restriction that public defender funding must come from Justice Fund levy. **Mr. Chadwick** answered yes and no; he explained that the Justice Fund is designed to pay for the public defender, but sometimes, if the county is capped and the county does not have sufficient revenue and the county still has the requirement to fund, then the county is going to have to reach into the current expense fund or draw from the property tax dollars to fund those programs. He emphasized that it is mandatory that the county draw first to the Justice Fund. Only if the county were in a bind could it look to somewhere else for funding. **Co-chair Senator Lakey** asked, if a county has the need to draw from

the three funds, does that mean they are getting more money and **Mr. Chadwick** answered "not really." Following up, **Co-chair Senator Lakey** referred to the chart and asked if it tells us which counties are really at their maximum and **Mr. Chadwick** stated they are actual percentages and they show where the counties are in terms of their maximum levies.

Representative Trujillo asked if **Mr. Chadwick** would take one of the counties and show the breakdown of each of the areas and **Mr. Chadwick** suggested he could provide a county by size and give an example in the range of counties. He agreed to provide this to the members. **Mr. Hoskins** was reintroduced to the members. He stated that the assumption they will make is 80 percent of all the FCEs are public defender cases. And, if the number of attorneys are applied to that a rough idea of their workload is as follows:

204 FCEs/attorney	Ada
341 FCEs/attorney	Bannock
206 FCEs/attorney	Bonner
397 FCEs/attorney	Bonneville
347 FCEs/attorney	Canyon
176 FCEs/attorney	Kootenai
175 FCEs/attorney	Twin Falls

Judge Huskey stated that the commission meets again on November 4th and she stated that she understands that the members are interested in knowing if the commission has any recommendations for legislation. She stated the public defender term of four years was taken out and she suggested that perhaps there will be a recommendation to reinstitute the term. She agreed to forward their suggestions to the committee.

Co-chair Senator Lakey recognized **Jerry Mason, Association of Idaho Cities**, to share his thoughts and concerns. **Mr. Mason** stated that **Mr. Grigg** referenced the percentage of city cases charged under city ordinance - of 8,800 cases, 189 were charged under a city ordinance (2.1%). He stated that he believed this was representative in terms of percentage. He asked the committee not to create a system that has transactional costs that are so high that every city will have to enter into contracts and get engaged in the public defense system when the city ordinance charges are only 2%. Additionally, he discussed an example of how local control is applied in Coeur d'Alene, emphasizing that local differences matter. He stated that cities prosecute because state law says they shall. And, when cities prosecute, they bring the case in the name of the state. He stated that there is no funding source - the city has a general fund and a current expense fund but all of them are capped by the 3% cap and caps have profound distortions in cities that have grown in size because costs are not linear. Continuing he stated that city growth varies, some exponentially, but caps are linear. He asked that the committee not make a system so complex that it becomes a burden to everybody.

Committee Discussion -- In terms of potential legislation in front of the committee for consideration, **Representative Luker** stated that he heard four areas today: reclassification based on the criminal justice commission report; parameters of court appointment and what to do with that; the term of the public defender contract that was taken out last time; and to evaluate the community/city involvement. Regarding the public defender training, **Representative Perry** stated she was interested in the funding of the Public School Income Fund, and that **Mr. Henderson** sent her his response and she forwarded the response on to the members today. The 22 1/2 percent that goes to the fund is a vestige of the early 1900s. She suggested that as the members look at this fund and the 22 1/2 percent, and consider putting it into the public defense commission, into our training program, and perhaps into specialty courts.

Co-chair Representative Bolz reported that the Criminal Justice Commission has been looking into the fines and fees situation and plans to report their findings to this committee. He stated this

is an area the committee really needs to take a hard look at from a legislative standpoint. He suggested the members need to address the question, "are they making some of these fines so high that they're not getting anything, versus if they were at a reasonable amount, they might get more?" **Senator Guthrie** commented that he heard one of the presenters caution against running too quickly into legislation and he opined that while this is true, he believes one should not shy away from it if it makes sense.

Co-chair Senator Lakey suggested that at the next meeting the members can discuss the parameters of the court appointment, the term of the public defender contract that was taken out, and further discussion on the proposed city legislation. **Representative Perry** stated her concern for some of the comments made that cities don't need to provide defense because the percentage of people is so small. She stated her discomfort with that idea, where we would choose transactional costs over what the rights of the people are. She emphasized that what matters is that if we prosecute we also need to have defense. **Co-chair Representative Bolz** asked **Mr. Chadwick**, as chairman of the reclassification subcommittee, what his plans are. **Mr. Chadwick** stated that the subcommittee made its report to the Criminal Justice Commission and the commission has made its recommendation to the Governor. **Ms. Thomas** stated that the commission has voted to support sending the letter to the Governor's Office. The letter making a recommendation to the Governor's Office will be sent out next week. The letter does not recommend legislation but simply asks him for his support. **Representative Luker** asked if the commission has a list of recommended statutory changes and that **Ms. Thomas** is going to provide that to the interim committee. **Ms. Thomas** stated that she has already emailed that to **Co-chair Representative Bolz** and to **Mr. Bush**.

Co-chair Senator Lakey stated that, given some of the issues in front of the members, another meeting seems necessary. **Representative Luker** stated that **Judge Huskey** will be making recommendations between November 4th and our next meeting date and assumes the members will receive a report so it can be considered. **Judge Huskey** stated she could provide a draft of their recommendation at the next meeting. **Representative Luker** noted there was a discussion about addressing court appointments of public defenders and asked if her commission would be able to take a stab at this and **Judge Huskey** agreed to bring this concern to the commission.

The members considered the next meeting date and decided to move the date to **Monday, November 24, 2014**.

The meeting adjourned at 11:55 a.m.